



EX PARTE OR LATE FILED
OFFICE OF THE CHAIRMAN

ORIGINAL

Tel.: (512) 236-8387
Fax: (781) 394-6428

Howard J. Siegel
Vice President of Regulatory Policy
502 West 14th Street
Austin, Texas 78701
Email: hsiegel@ip.net

2001 JAN -9 P 3:08

January 8, 2001

RECEIVED

JAN 16 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply Comments of IP Communications Corporation in CC Docket No. 00-217

Dear Ms. Salas:

Pursuant to the Commission's public notice, IP Communications Corporation ("IP") hereby files its further reply comments in CC Docket No. 00-217 relating to SWBT's applications for Section 271 Relief in Kansas and Oklahoma.

Thank you for your cooperation in this matter. If you have any questions, do not hesitate to contact me.

Sincerely,

Howard J. Siegel
Vice President of Regulatory Policy
IP Communications Corporation

No. of Copies rec'd
List A B C D E

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Application of SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Kansas)	
)	CC Docket No. 00-217
Application of SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Oklahoma)	

**Further Reply Comments of IP Communications Corporation on SBC's Applications for
271 Relief in Kansas and Oklahoma**

Howard Siegel
Vice President of Regulatory Policy
IP Communications Corporation
17300 Preston Road, Suite 300
Dallas, Texas 75252
512/339-7434
781/394-6428 (fax)
214/435-9029 (cell)
hsiegel@ip.net

January 8, 2000

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	2
II. BY SUBMITTING THE SBC EX PARTE, SBC PROVES THAT THE CLEC AND DOJ EVALUATIONS ARE CORRECT	3
III. THE SCOPE OF THE SBC EX PARTE IS TOO NARROW	4
IV. THE LEVEL OF PRICE REDUCTION IS INSUFFICIENT TO ADDRESS THE BARRIERS TO ENTRY CREATED BY INAPPROPRIATELY HIGH RECURRING AND NONRECURRING RATES	5
V. AFTER THE FACT PRICE REDUCTIONS DO NOT ADDRESS CONTINUING CONCERNS REGARDING THOSE RATES THAT ARE CURRENTLY INTERIM	6
VI. SBC'S ABUSE OF THE 271 PROCESS CAN NEITHER BE CONDONED NOR IGNORED	7
VII. UPON REJECTING THE APPLICATION FOR FURTHER STATE PROCEEDINGS, THE FCC MUST NOT STOP SHORT OF RULING ON OTHER CRITICAL AND TIME-SENSITIVE ISSUES RAISED DURING THESE PROCEEDINGS	11
VIII. ONCE COMPLIANT RATES ARE IN EFFECT, SWBT MUST RESTART THE FOUR-YEAR TERM OF THE K2A AND O2A	12
IX. CONCLUSION	13

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Application of SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Kansas)	
)	CC Docket No. 00-217
Application of SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	
And Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Oklahoma)	

**Further Reply Comments of IP Communications Corporation on SBC's Applications for
271 Relief in Kansas and Oklahoma**

On December 28 2000, SBC Communications Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (collectively, SWBT and/or SBC) submitted an Amended Ex Parte Presentation ("SBC Ex Parte") in which they parties have attempted to substantively amend their joint application for authorization to provide in-region, interLATA service in the States of Kansas and Oklahoma, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. On the same day, the Commission issued a Public Notice seeking comment on the SBC Ex Parte.¹ During this proceeding, IP Communications

¹ *Southwestern Bell Files Amendment to December 27th Ex Parte in Section 271 Kansas and Oklahoma Proceeding: Comment Schedule Set in December 27th Public Notice Remains the Same*, FCC Public Notice, CC Docket No. 00-217 (rel. Dec. 28, 2000).

Corporation (“IP”) filed comments on November 11, 2000, an ex parte letter that affectively supplemented those comments on November 30, 2000, and reply comments on December 11, 2000. In response to the Commission’s latest Public Notice, IP hereby provides further comments pursuant to the Common Carrier Bureau’s Public Notice.

I. INTRODUCTION AND SUMMARY

The SBC Ex Parte is effectively an amendment to the 271 applications. In that ex parte, SBC amends its application to lower non-recurring charges on many unbundled network elements (“UNEs”). Although this substantive amendment requires more than 10 days over a holiday weekend to fully respond, in compliance with the Commission’s Public Notice, IP includes as complete a response as can be provided given the circumstance.

On a substantive note, IP explains that while the SBC Ex Parte is a small, first step in the right direction, SWBT rates in Kansas and Oklahoma, both recurring and nonrecurring, remain excessive. As such, the substantial barriers to entry caused by excessive rates continue in these states.

Second and even more importantly, SBC’s abuse of the state 271 processes has come to fruition. In IP’s initial comments, IP noted how SBC forced these applications through the state commissions preventing any form of meaningful dialog and collaboration. SBC garnered its political force to obtain state approval of applications that it knew full well would not meet FCC scrutiny. Now, SBC attempts to bargain a resolution at the last minute without parties being able to have serious evaluation and discussion surrounding the SBC proposals. Moreover, SBC puts undue political pressure on this Commission by “improving” the applications when the applications never should have been filed with the Commission in the first instance. Such

conduct is an abuse of process and makes a farce out of the state proceedings. To avoid further abuses in the future, the Commission has no choice but to: (1) reject the application, either without considering the SBC Ex Parte or do to the fact that SWBT's rates continue to be excessive even when considering the SBC Ex Parte, (2) direct SBC to go back to the states for the development of a more collaborative record on all disputed issues, and (3) consider later applications after the numerous substantive concerns that have been raised are fully addressed.

II. BY SUBMITTING THE SBC EX PARTE, SBC PROVES THAT THE CLEC AND DOJ EVALUATIONS ARE CORRECT

Most commenters to SBC's Kansas and Oklahoma applications, including the DOJ and most CLECs, demonstrate that SBC's applications are based on excessive rates, particularly when compared to the Texas rates that this Commission reviewed in the Texas 271 proceeding. CLECs made the same arguments at the state level to no avail. The SBC Ex Parte is nothing less than an admission that its rates approved at the state level and contained in its applications are above its forward looking cost. If those rates were truly TELRIC compliant, SBC would not be in a position to offer a voluntary 25% reduction in prices. Such a reductions, if the current rates were TELRIC compliant, would put the UNEs below cost.

Instead, by offering such reductions SBC demonstrates not only that the rates in its application were well above TELRIC, but also makes suspect all arguments it has used to support even the discounted rates as being the result of a TELRIC review since SBC has discredited the underlying state cost proceedings. Moreover, there will be continued concern that once the four-year contract terms have expired, SWBT will once again argue in favor of the inflated rates with which it began. This is hardly a recipe for irreversible competition. The

applications cannot be approved until there is a full and complete record that demonstrates that SWBT's rates are TELRIC compliant.

III. THE SCOPE OF THE SBC EX PARTE IS TOO NARROW

Not only does SBC effectively concede that the rates it applies in Kansas and Oklahoma are not TELRIC compliant, it attempts to pick and choose the application of the partial, corrective mechanism. Given that the rates at the state level are not TELRIC compliant, it is wholly arbitrary to only consider a reduction to nonrecurring charges.² Although commenters focused most rate discussion on nonrecurring charges, such a focus was based on the fact that those rates were the most obvious and easiest to explain. Rate concerns are not limited to nonrecurring charges; IP for example, included a reference to the recurring charges for DS3 Interoffice Transport in its initial comments. The inflated nature of this particular rate element creates harm to IP by creating an unreasonable cost to its network deployment. As another concern, the interim Kansas collocation rates were never subject to a costing review.

In addition to the arbitrary exclusion of recurring rates, SBC excludes many nonrecurring rates. SBC does not apply the 25% reduction to loop conditioning charges or to loop make-up requests. Also, the reductions neither apply to UNEs purchased out of the UNE Remand Attachment nor to UNEs purchased out of the Line Sharing Appendix. In fact, the only reference to digital subscriber line ("DSL") is on the last page of the ex parte where SBC states in a note that the recurring rate for XDSL loops should be equal to the discounted 2W analog loop rates. Although the application of the 25% reduction is better than not having it, the arbitrariness of the offer, the limitations contained within it, the timing of it, and the inability to develop a real process for achieving appropriate rates, as proposed by IP, demonstrates why this

Commission cannot have sufficient confidence in SWBT's prices to find that they are TELRIC-based.

IV. THE LEVEL OF PRICE REDUCTION IS INSUFFICIENT TO ADDRESS THE BARRIERS TO ENTRY CREATED BY INAPPROPRIATELY HIGH RECURRING AND NONRECURRING RATES

The selection of "25%" is wholly arbitrary. SBC does not provide any analysis to explain why a 25% reduction should be sufficient to bring its rates into compliance, as opposed to 40% or 65%. Of course, the fallacy is in the "across the board approach." There may be certain rates that are inflated by only 25%. For those rates, a 25% rate reduction is appropriate. For a rate that is equal to 44,160 percent of the comparable Texas rate, a proper reduction would be closer to a 98.5% reduction.

IP refers to its initial comments that include a sampling of rates that will continue to be multiples of the comparable Texas rate even with the 25% reduction. For example, Oklahoma feature activation charges for ISDN were reduced from \$4.26 to \$3.20 per feature. While this 25% reduction is a step in the right direction, the comparable Texas rate is \$0.09. For analog features the new lower Oklahoma rate is \$1.37 per feature as opposed to \$0.05 in Texas. What is even more troubling in Oklahoma, SWBT is misapplying language that was cosponsored by IP to charge this amount when features are not being activated. In other words, on a conversion, SWBT will attempt to charge \$1.37 a piece for features that the customer already has even though the conversion will not be cause a new activation. Such a charge when there are no costs cannot be cost-based.³

² In addition to nonrecurring charges, for Oklahoma only, SBC does reduce the recurring rates on 4 UNEs.

³ There are certainly other examples to catalog such as 2W Digital loops in Oklahoma being 4 times that of Texas. Rather than cataloging every cost difference, which is not feasible given the schedule, the cure is an appropriate process that reaches proper rates across the board.

In addition to rates still remaining well in excess of Texas comparables, it is of further concern that SBC refers to these rates as “discounted”. Such a reference implies that the previous, more inflated rates will be the assumed starting point for future negotiations and may signal a future argument by SWBT that the SBC/Ameritech Merger Condition discounts will not be applicable. Both of these possibilities create further uncertainty and the likelihood of expensive and unnecessary litigation.

V. AFTER THE FACT PRICE REDUCTIONS DO NOT ADDRESS CONTINUING CONCERNS REGARDING THOSE RATES THAT ARE CURRENTLY INTERIM

IP the DOJ and others have voiced serious concerns regarding reliance on interim rates in these proceedings. Particularly, parties have warned that when a state commission has historically set rates that are not TELRIC compliant, this Commission should not rely on interim rates for 271 relief. In more blunt terms, this Commission can reasonably rely on interim rates when the state commission has a long-standing track record for setting permanent rates that are TELRIC compliant.⁴ Any after-the-fact reduction like the ones in the SBC Ex Parte will not address the concerns regarding interim rates. IP is particularly concerned with the treatment of interim rates given that xDSL-related rates, line sharing, Pronto, and collocation rates are all interim. So long as there is the risk that these interim rates will be replaced with permanent rates of a magnitude similar to the rates in the K2A and O2A, there cannot be irreversible competition.

This Commission, therefore, has two realistic options. It can deny the application noting that any future applications will be automatically rejected until permanent rates are developed across the board. Or, the Commission could direct the use of a process, such as that proposed by

⁴ IP does not point a finger of fault at the state commissions. Many factors go into a rate proceeding. Notwithstanding fault, the results are that SWBT's rates in Kansas and Oklahoma are and have been excessive.

IP, that focuses the scope for the development of future permanent rates. IP advocates the latter for a number of reasons. First, reasonable rates are developed sooner with a focused process. Second, the regulatory process is streamlined and therefore regulatory costs are more easily controlled in the latter process.⁵ Third, as IP has discussed in prior comments, 271 relief can be granted sooner with less contention regarding rates with the adoption of IP's ratemaking proposal.

VI. SBC'S ABUSE OF THE 271 PROCESS CAN NEITHER BE CONDONED NOR IGNORED

IP stated the following in its initial comments to this Commission:

Justice and a fair resolution of issues will not be had through SWBT steamrolling the process at the state level and then negotiation with FCC staff on a new and much different application. Such conduct would make a farce out of the state proceedings, send the message to CLECs not to participate in state proceedings in the future, and will not achieve the benefits from the federal-state partnership that was supposed to be developed in the 271 process. With further guidance to state commissions on how to evaluate an application, IP is hopeful that the issues addressed by IP and others can be fully addressed at the state level such that when these applications come back to the Commission, for example in 6 to 9 months, there will be a record in place that can be used to evaluate the true status of competition in these states. Lastly, these dockets are only the first step. If SWBT achieves the lowering of the bar in these proceedings, the standards set in Texas and New York will never be achieved again. Worse yet, there will be even further testing of the Commission's resolve as Regional Bell Operating Companies ("RBOCs") test the ability to lower the bar even further. Instead, a forceful and direct

⁵ IP reminds the Commission that the regulatory burden will be significant. CLECs and SWBT will be looking at separate proceedings not only Oklahoma and Kansas but presumably Missouri and Arkansas as well. Second, the number of CLEC participants is dwindling. SBC has a "special" relationship with COVAD. Other CLECs that have sought TELRIC-based rates have gone out of business. ASI relies on CLECs to obtain reasonable rates on its behalf. AT&T and Worldcom are in the process of restructuring. With these real world developments, many the product of SBC policies, this Commission cannot have confidence that full scale TELRIC proceedings in each of these four states will produce compliant rates across the board. Without such confidence, a finding of irreversible competition cannot be made.

decision is necessary that will limit SWBT's ability to force such dockets through state commissions in the future.⁶

With the SBC Ex Parte, we have exactly that which IP had cautioned. SBC refused to work with interested parties at the state level; used its influence to steamroll its applications; came to this Commission, in what some might consider bad faith, with an application that clearly would fail 271 scrutiny; put competitors like IP in the position of diverting scarce regulatory resources to this proceeding rather than important state-level substantive proceedings, wasted the resources of this Commission and the Department of Justice ("DOJ") to review an application that SBC knew would require amendment; and now attempts to incrementally bargain to pressure this Commission to give it final 271 approval before all substantial barriers to entry are removed.

Such conduct is not only harmful to competitors but also consumers who are denied the benefits of competition while these games are being played. While SBC plays this "tit for tat" approach, the competition is in danger of going out of business. A brief news search will show that companies like Vectrus Communications which were once fighting to get 251 compliant rates, are now fighting for survival as they have been unable to meet revenue and customer projections due, at least in part, to SBC's refusal to be bound by cost-based rates, to agree to a reasonable collocation tariff on a timely basis, and to unbundle Project Pronto as required by Paragraph 313 of the UNE Remand Order, as well as continuing favorable treatment provided to its advanced services affiliate.⁷

⁶ Comments of IP Communications Corporation on SBC's Applications for 271 Relief in Kansas and Oklahoma, Nov. 15, 2000 at 5.

⁷ To demonstrate another example of the preferential treatment provided to SBC's advanced service affiliate, IP attaches its most recent informal complaint filed in Texas. As that complaint demonstrates, SBC's Discriminatory conduct is taking place on a 13-state basis as Exhibit "A".

In prior orders and meetings, this Commission and its staff have noted with concern situations where CLECs fail to participate in state 271 proceedings but raise issues for the first time when the federal application is filed. Although IP actively participated in the state proceedings, SBC's conduct in this proceeding demonstrates why many CLECs either wait until the federal proceeding to participate or do not participate at all. SBC's conduct throughout this proceeding marginalizes the state processes to the point that they are almost irrelevant. SBC waists CLEC resources by taking unreasonable positions at the state level that it might be able to "get through the state" and then for the first time negotiating the large and critical issues at the federal level. A new and/or small carrier is more often then not going to choose to focus its limited regulatory resources on the "tree" of the day, rather than looking at the "forest", that is a federal 271 proceeding, when the state proceeding appears hopeless.

Even when SBC is surprised by a couple of strong decisions, such as the Oklahoma commission adopting the Texas line sharing results, SBC's positions on so many issues, such as UNE rates across the board, are so unreasonable and numerous that any incremental decisions at the state level cannot cure the overall deficiencies.

IP, for one, has provided a roadmap to "yes" both at the state level and in this proceeding. As a result, SBC will only have itself to blame for the rejection of these applications. With regard to rates, IP again focused on a process to fairly address rate issues in its federal comments. Instead of responding to those comments and working with IP and others to build a framework to resolve rate uses, SBC has resorted to throwing out some crumbs that do not address rate concerns in the short run and raises serious questions about the viability of competition in the long run. IP urges this Commission to again look at the proposal that IP made regarding the development of interim and permanent 271 compliant rates. A final order in this

proceeding supporting the reasonableness of that approach will not only achieve reasonable rates today and tomorrow but also act as a mechanism to expedite SBC's eventual 271 relief.

VII. UPON REJECTING THE APPLICATION FOR FURTHER STATE PROCEEDINGS, THE FCC MUST NOT STOP SHORT OF RULING ON OTHER CRITICAL AND TIME-SENSITIVE ISSUES RAISED DURING THESE PROCEEDINGS

It is critical that this Commission not let other critical and time-sensitive issues linger further. This Commission should fight any temptation to “restart” or “dismiss” this proceeding rather than denying 271 relief in an order that provides sufficient guidance on rate issues as well as other substantive issues the parties. A sampling of this issues raised by IP include: SWBT’s failure to comply with the requirement to unbundled Project Pronto pursuant to Paragraph 313 of the UNE Remand Order, the discriminatory and harmful effect on CLECs that results from inaccurate loop make-up information,⁸ the appropriate way to analyze performance data such that one cannot support a 271 application with performance to one’s affiliate⁹, the inappropriate reliance of provisioning performance data from different states¹⁰, and the compliance with prescribed performance benchmarks before granting 271 relief.¹¹

Without such guidance, not only will new applications in Oklahoma and Kansas be thrown back into the same quagmire, but also the same issues will continue to be argued in other states, like California and Missouri. Similarly, the pattern of allowing incumbents to withdraw

⁸ Because of a recent SWBT pleading in Missouri, after the time that IP had to formally respond, IP wishes to make clear once again its position on loop make-up information before similar mischaracterizations can be made in this proceeding. In spite of the discriminatory effect that inaccurate loop information has, such an effect SBC never disputes, IP has not sought “perfect loop make-up information”. SWBT proposed adopting PM 1.2 from Texas that sets a 95% benchmark. IP does not oppose that benchmark. What IP seeks are additional steps to minimize the harm borne by CLECs until such time as SWBT reaches that benchmark. Similarly, IP seeks a timeline for SWBT to reach that benchmark. IP believes that such a timeline is consistent with the action plans that SWBT is required to provide pursuant to Attachment 17.

⁹ See Exhibit “A”, the Second Informal Complaint of IP Communications as an example of how affiliate data can distort. Only with performance to CLECs can this Commission have confidence that SWBT is meeting its obligations.

¹⁰ As noted in prior comments, SWBT’s performance measures expert admitted during the Oklahoma hearing that provisioning performance data cannot be ported from one state to another.

¹¹ The Texas 271 was based on meeting 90% of the performance measures on a running 2 out of 3 month basis. Neither application before the Commission has come close to that standard. Moreover, when focusing on the DSL market place, that results are even more dismal than the aggregate.

their application when they believe they will be rejected has the unintended consequence of delaying the resolution of key issues and forcing parties to argue them in state after state.

VIII. ONCE COMPLIANT RATES ARE IN EFFECT, SWBT MUST RESTART THE FOUR-YEAR TERM OF THE K2A AND O2A

What is most obvious from SBC's ex parte is that the K2A and O2A, as they have been available, do not have rates that are sufficient to support irreversible competition. For competition to develop, this Commission should clarify that CLECS have an opportunity to restart the four-year terms of the K2A and O2A once true TELRIC rates are developed. Similarly, if SWBT eventually agrees or is ordered to follow IP's ratemaking proposal, the term of the agreements would restart as of the date the Texas rates become available in Kansas and Oklahoma, respectively.

IX. CONCLUSION

IP does not have the power of prophecy. Instead, SBC's game plan has been clear and obvious to most observers. By delaying its concessions to the last possible date and past the time that competitors can seek any form of work session, collaborative workshop, or hearing, SBC hopes to minimize its concessions to the point that it will continue to have the benefit of substantial barriers to entry and market power. Such conduct not only limits this Commission's ability to make decisions with the benefit of a full record, it has the tendency of shifting the burden of proof onto interveners, rather than on SBC. In the brief time provided, IP has documented numerous deficiencies with the SBC Ex Parte proposal. It is a near certainty that IP has not developed an understanding of all of the deficiencies. That is the role of a comprehensive state proceeding that would allow for group discussion and education.

Rather than throwing out a number/percentage in the manner that SBC has done, IP recommends the thorough and balanced approach put forth in its prior comments. That approach puts in place an immediate cure to SBC's high recurring and nonrecurring rates while providing all parties the opportunity to seek adjustments based solely on proven, real world cost differences. In the absence of such a comprehensive and focused approach, the problems noted by the DOJ and CLECs cannot be corrected on this record.

Finally, IP urges the Commission not to lose sight of the non-price issues that remain. Proper rates for some UNEs will not cure SWBT's failure to properly offer other UNEs. Competitors, as well as SBC, will benefit from clear and direct resolution of these issues rather than further rehashing of the same issues on a state-by-state basis.

January 8, 2001

Respectfully submitted,

IP COMMUNICATIONS CORPORATION

By

Howard Siegel
Howard Siegel

Vice President of Regulatory Policy
IP Communications Corporation
502 W. 14th Street
Austin, Texas 78701
512/236-8387

STATE OF TEXAS

COUNTY OF TRAVIS

)
)
)

AFFIDAVIT OF HOWARAD SIEGEL
ON BEHALF OF IP COMMUNICATIONS CORPORATION

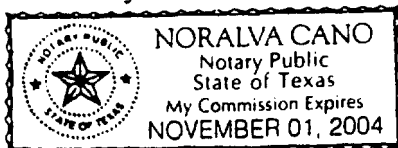
Before me, the undersigned authority, on this __th day of January 2001, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of Regulatory Policy for IP Communications Corporation ("IP"). I have personal knowledge of the facts contained herein.
2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as IP's Vice President of Regulatory Policy.

Further Affiant sayeth not.

Howard Siegel
Howard Siegel

Sworn to and subscribed to before me this 8th day of January 2001, to certify which witness my hand and seal.



Noralva Cano

Notary Public in and for the State of Texas
My Commission expires 1-01-04

CERTIFICATE OF SERVICE

I have on or before this 3rd day of January, 2001, caused a true copy of the Further Reply Comments of IP Communications Corporation on SBC's Applications for 271 Relief in Kansas and Oklahoma to be served on the parties listed below:

Chairman William E. Kennard Commissioner Harold W. Furchtgott-Roth Commissioner Susan Ness Commissioner Michael K. Powell Commissioner Gloria Tristani Magalie Roman Salas, Secretary Federal Communications Commission 445 12 th St., S.W. Washington, D.C. 20554	Janice M. Myles Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission 445 12 th St., S.W., Room 5-B-145 Washington, D.C. 20554
Layla Seirafi U.S. Department of Justice Antitrust Division, Suite 8000 Telecommunications Task Force 1401 H Street, N.W. Washington, D.C. 20530	Michelle Carey Chief, Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission 445 12 th Street, SW Washington, D.C. 20544
John Stanley Common Carrier Bureau Federal Communications Commission 445 12 th Street, S.W. Washington, D.C. 20544	ITS, Inc. 445 12 th St., S.W. Washington, D.C. 20554
Dorothy Atwood Chief, Common Carrier Bureau Federal Communications Commission 445 12 th Street, S.W. Washington, D.C. 20544	Geoffrey M. Klineberg Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C. 1615 M Street, N.W., Suite 300 Washington, D.C. 20036 Counsel for SBC
James D. Ellis Paul M. Mancini Martin E. Grambow SBC Communications, Inc. 175 E. Houston San Antonio, TX 78205	Antony Petrilla Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., Suite 300 Washington, D.C. 20007-5116 Counsel for Adelphia, Connect!

Katherine D. Farroba
Deputy Chief
Policy and Program Planning division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Jonathan Askin
General Counsel
ALTS
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Geraldine Mack
AT&T Corporation
295 North Maple Ave
Basking Ridge, NJ 07920

Mark E. Haddad
Ronald S. Flagg
Peter D. Keisler
David L. Lawson
Sidley and Austin
1722 Eye Street, N.W.
Washington, D.C. 20006
Counsel for AT&T Corporation

David J. Newburger
Newburger & Vossmeier
One Metropolitan Square, Suite 2400
St. Louis, MO 63102
Counsel for Campaign for
Telecommunications Access

Brad E. Mutschelknaus
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Counsel for e.spire

Michael J. Shortley, III
Associate General Counsel
Global Crossing Telecommunications, Inc.
180 S. Clinton Ave.
Rochester, NY 14646

Kevin Hawley
Swidler Berlin Shereff Friedman, LLP
3000 K St., N.W., Suite 300
Washington, D.C. 20007
Counsel for KMC Telecom

Robert W. McCausland
Vice President, Regulatory and
Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207-3118

Pace A. Duckenfield
Counsel
Alliance for Public Technology
919 18th Street, N.W., Suite 900
Washington, D.C. 20006

Karen Nations
Senior Attorney
Metromedia Fiber Network Services, Inc.
One Meadowlands Plaza
East Rutherford, NJ 07073

Jane Van Duzer
Senior Counsel
Focal Communications Corp.
200 North LaSalle Street
Suite 1100
Chicago, IL 60601

A. Renee Callahan
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st St., N.W.
Washington, D.C. 20036
Counsel for Sprint

Bret Lawson
Eva Powers
Janet Buchanan
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604-4027

Joyce Davidson
Oklahoma Corporation Commission
Jim Thorpe Office Building
2101 N. Lincoln Blvd.
Oklahoma City, OK 73152-2000

Commissioner Bob Anthony
Oklahoma Corporation Commission
Jim Thorpe Building
2101 N. Lincoln Blvd.
Oklahoma City, OK 73152-2000

Commissioner Ed Apple
Oklahoma Corporation Commission
Jim Thorpe Building
2101 N. Lincoln Blvd.
Oklahoma City, OK 73152-2000

Terry J. Romine
Director of Legal and Regulatory Affairs
Adelphia Business Solutions, Inc.
One N. Main Street
Coudersport, PA 16195

Genevieve Morelli
Andrew M. Klein
Kelley Drye and Warren LLP
1200 19th Street, N.W.
Washington, D.C. 20036
Counsel for KMC Telecom

Chair John Wine
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-2425

David R. Conn
Deputy General Counsel & AP
Richard S. Lipman
Associate General Counsel
McLeodUSA Incorporated
McLeodUSA Technology Park
6400 C Street, SW
Cedar Rapids, Iowa 52406-3177

Walker Hendrix
Citizen's Utility Ratepayers Board (CURB)
1500 SW Arrowhead Rd
Topeka, KS 66604-4027

Merle R. Blair
President & CEO
Greater Topeka Chamber of Commerce
120 SE 6th Avenue, Suite 110
Topeka, KS 66603-3515

Lisa C. Creighton
Sonneschein, Nath & Rosenthal
4520 Main Street
Suite 1100
Kansas City, MO 64111
Counsel for Ionex Communications, Inc.

Commissioner Denise Bode
Oklahoma Corporation Commission
Jim Thorpe Building
2101 N. Lincoln Blvd.
Oklahoma City, OK 73152-2000

Keith L. Seat
Senior Counsel
Federal Law and Public Policy
WorldCom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Commissioner Cynthia Claus
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-2425

Commissioner Brian Moline
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66606-2425

Michael Donohoe
Vice President-Legal
Joann Russell
Director-LEC Relations
McLeod USA Incorporated
CapRock Communications Corp.
15601 Dallas Parkway - Suite 700
Dallas, TX 75001

Patricia Ana Garcia Escobedo
ConnectSouth Communications, Inc.
9600 Great Hills Trail 250E
Austin, TX 78759

Mary C. Albert
Morton J. Posner
Regulatory Counsel
Allegiance Telecom, Inc.
1150 Connecticut Ave., N.W., Suite 205
Washington, DC. 20036

Carrington F. Philip
Vice President, Regulatory Affairs
Donald L. Crosby
Senior Counsel
Cox Communications
1400 Lake Hearn Drive, NE
Atlanta, GA 30319

Gene Spineto
Telecommunications Manager
Environmental Management Inc.
Post Office Box 700
Guthrie, OK 73044-0700

Glen Reynolds
Associates Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Patrick J. Donovan
D. Anthony Mastando
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for Focal Communications

Exhibit "A"

IP COMMUNICATIONS CORPORATION
JANUARY 3, 2001

PROJECT NO. 21000

INFORMAL DISPUTE RESOLUTION § PUBLIC UTILITY COMMISSION
FOR ISSUES RELATING TO §
OPERATIONAL SUPPORT SYSTEMS § OF TEXAS

SECOND INFORMAL COMPLAINT OF IP COMMUNICATIONS CORPORATION

TABLE OF CONTENTS

HEARING REQUEST	3
INTRODUCTION	3
EXECUTIVE SUMMARY	4
I. DISCRIMINATION AS TO NOTICE AND IMPLEMENTATION OF THE TRIAL.....	5
II. SWBT HAD NO INTENTION OF NOTIFYING CLECS OF THE SYNC TESTING BEING PERFORMED ON ASI'S BEHALF	7
III. THE TRIAL IS NOT A "TRIAL"	8
IV. SWBT'S REQUIREMENT THAT EACH CLEC PROVIDE THE TEST EQUIPMENT IN EACH CENTRAL OFFICE IS UNREASONABLE, UNPRECEDENTED, INEFFICIENT, AND WAS PREDETERMINED BEFORE ANY TRIAL MEETINGS TOOK PLACE.....	9
V. SWBT CONTINUED THE "TRIAL" IN SPITE OF ITS COMMITMENT THAT IT WOULD BE DISCONTINUED UNTIL IT WAS SUBJECT TO A MORE COLLABORATIVE PROCESS	10

VI.	ASI CONTINUES TO RECEIVE A FREE SERVICE THAT GIVES IT A SUBSTANTIAL, UNFAIR COMPETITIVE ADVANTAGE	11
VII.	RATHER THAN RESPONDING TO CLEC CONCERNS, SWBT IS EXPANDING THE PROBLEM.....	12
VIII.	THE STANDARD PROVISIONING PROCESS CONTINUES TO LANGUISH NOW THAT ASI HAS AN ALTERNATIVE FREE SERVICE TO FIND SWBT PROVISIONING FAILURES... ..	13
	CONCLUSION & RELIEF REQUESTED	14

HEARING REQUESTED

IP Communications Corporation ("IP") seeks an initial meeting on this informal complaint in an expedited fashion. Counsel for SWBT was provided notice that IP would be filing this complaint this week and would be seeking an initial meeting on January 18, 2001. Counsels for SWBT and IP, however, have not had an opportunity to discuss a proposed meeting date and time.

INTRODUCTION

The issues in this complaint demonstrate a fundamental breakdown in the wholesale process and nondiscrimination principles. By filing this complaint, IP seeks the Commission's assistance through its informal dispute resolution process to address the clear and unambiguous discrimination favoring SWBT's data affiliate, SBC Advanced Solutions, Inc. ("ASI"). And, to be frank, IP has struggled to find the appropriate forum to achieve adequate and expedited attention to the existing and substantial preference being enjoyed by ASI.

The end result from this proceeding should be a clear and unequivocal understanding that SWBT will no longer provide wholesale services that are specifically designed for ASI.¹ IP is a wholesale customer of SWBT, and SWBT is legal barred from: giving ASI special notice and consideration, head starts, and creative planning to effectuate an end-around these obligations.

¹ As another example of the "trial" being tailored to ASI without regard to other CLECs, the trial is only for line sharing, which is the only offering provided by ASI. This is in spite of the fact that a sync test could be equally applied to standalone xDSL loops.

EXECUTIVE SUMMARY

Although the principle that must be reinforced out of this complaint is broad, the specific issue raised by IP herein is specific, customer-affecting, and demonstrates clear and unequivocal discrimination in favor of ASI. The substantive issue relates to SWBT's "sync test service". Although SWBT will argue that the "sync test service" is a "trial", that window dressing is a false façade. What will be discussed in greater detail herein are the following facts:

- ASI was participating in the "trial" before SWBT provided an accessible letter to CLECs notifying CLECs of the "trial";
- That accessible letter was only provided after CLECs inadvertently learned of the sync test in a meeting relating to other issues;
- The trial is a misrepresentation, in that, a trial is designed to test a couple of offices to work out procedures and methodologies collectively. On the other hand, the "sync test service" per SBC's own admissions is taking place in every central office in the total SBC territory (e.g., SWBT, Pacific Bell, Ameritech) where ASI has a presence²;
- SWBT has placed unreasonable limitations on the "sync test service" that are clearly intended to distort the costs associate with a sync test in favor of its deep-pocketed affiliate;
- SWBT misrepresented to CLECs following discussion at the DSL forum that the sync test was halted pending corrective action and CLEC input;

² The reference to ASI includes the Ameritech affiliate. Although that affiliate had been referred to as AADS, it is now commonly referred to as ASI North.

however, IP has since learned that such statements were false and that ASI continues to benefit;

- ASI is effectively receiving a free service that enhances the overall provisioning accuracy that SWBT provides to ASI vis-a-vie CLECs;
- Also, in contrast to what was stated in the November 2, 2000 DSL Forum, the Sync Test is not limited to confirmation of sync from the CLEC DSLAM to the end users equipment, but also provides confirmation of central office wiring continuity. Continuity has been the major provisioning obstacle for both UNE loops and Line Sharing;
- Because ASI is receiving this special free service, SWBT has a diminished incentive to correct the continued lackings in its standard provisioning processes; and
- Finally, in spite of CLEC concerns and request for the trial to be halted until proper structure and safeguards are considered, SWBT has recently expanded the trial to now include maintenance.

I. DISCRIMINATION AS TO NOTICE AND IMPLEMENTATION OF THE TRIAL

This is the clearest and most obvious example of discrimination. SWBT created the sync test service, provided it to ASI only, implemented it, and then upon discovery by CLECs, first sent out an accessible letter notifying CLECs of the “trial”.³ Moreover, so as to not interfere with ASI’s continuing free service, the notice in the accessible letter

³ Unfortunately, whenever a situation like this is indirectly discovered, the question facing competitors and regulators must be: “what about the actions that have not yet come to light?”

provided for immediate implementation. Such implementation, as will be discussed below, that was not available to CLECs because SWBT has taken the unprecedented position that the CLECs must acquire all test equipment used by SWBT central office technicians, rather than the standard practice of the SWBT technician using SWBT test equipment that would be used for all carriers and be part of the cost of any eventual service should a separate charge be appropriate.⁴ Moreover, while SWBT has suggested that there will be a charge for "sync testing" in the future, SWBT has not provided any information regarding the magnitude of charge it will seek. As a result, SWBT has put CLECs interested in sync testing in the unreasonable position of being forced to make a large investment in test handsets when such investment may very well become stranded if, based on the sync test charge, it becomes uneconomical to request sync testing.

The accessible letter referenced is attached hereto as Exhibit 1. That letter provided the first official notice to CLECs with the inaugural meeting on September 29, 2000. Yet, SWBT had already begun providing free sync testing to ASI since ASI had already shipped test equipment throughout its service territory. As a result, when the initial meeting took place, the discussion was not related to the collaborative development of a trial and the possible ways sync testing might be accomplished in the future; instead CLECs were largely told what SWBT was providing to ASI and that SWBT would start doing the same for CLECs if they adhered to the process SWBT and its affiliate had already developed between the two of them. Although CLECs protested,

⁴ As unreasonable as that sounds, the specific section on test equipment will show that this reference is just a first step. SWBT not only wants each CLEC to provide SWBT with equipment for each central office but SWBT was unprepared to suggest a vendor for such equipment. Of course, to the extent that uncovering SWBT provisioning errors is the predominant benefit of the test, the costs should be considered part of the provisioning/maintenance functions and a separate charge would not be appropriate.

the “trial” moved forward and ASI continued to receive the free service on an exclusive basis.

II. SWBT HAD NO INTENTION OF NOTIFYING CLECS OF THE SYNC TESTING BEING PERFORMED ON ASI’S BEHALF

What needs to be understood is the genesis of the “public” notification of the trial. During a regular line sharing collaborative meeting, the issue of provisioning errors and testing issues were being discussed. As an afterthought, one of the SWBT subject matter experts (“SME”) innocently asked the CLECs about sync testing. The CLECs, with the expected puzzlement, asked what the SWBT SME was talking about. It was during that conversation that CLECs learned that SWBT was providing sync testing to ASI. To address the collective CLEC outrage, SWBT provided the September 21, 2000 accessible letter announcing the existence of a “trial”.

III. THE TRIAL IS NOT A "TRIAL"

The trial is a "trial" in name only. SWBT's reference to the sync test service as a "trial" is an attempt by SWBT to downplay the preferential treatment it has provided to ASI. So the record is clear, below is a table comparing what one would expect in a trial versus the history with the sync test:

A True Trial	Sync Test Process
Participants notified before process commences.	CLECS were notified after SWBT had discussed the service with ASI, designed the service for ASI, acquired and dispersed the equipment, and made the service operational for ASI.
Participants discuss the goals of the trial.	CLECs were told that what the offering was and what the rules would be. No results criteria or expectations were ever determined to evaluate the success or failure of the "trial"
Participants discuss alternative to achieve those goals.	CLECs were told that what the offering was and what the rules would be.
Multiple scenarios are usually trialed to see which makes more sense from an operations standpoint. For example, three different configurations were trialed for the line sharing trial.	CLECs were told that what the offering was and what the rules would be.
Trials are commenced on a narrow scale. For example, only two SWBT central offices were included in the line sharing trial.	Only the method that was rearranged by SWBT and ASI was considered. Moreover, sync testing is taking place in all, or nearly all, central offices in which ASI is providing service.
Participants agree to a start date, an end date, and an evaluation period.	Trial started before participants were notified. SWBT has stated that the process will continue for at least six months and without a determined end date, thus indefinitely. No test plan was developed prior to providing the free service to ASI.
Information lines are kept open.	Although SWBT stated during the DSL forum that the test would be stopped, moved to the line sharing collaborative, and continued through a controlled process under the supervision of that collaborative, SWBT has continued to provide the free service to ASI and did not replace the trial lead after that person was transferred so CLECs lacked a contact person to voice complaints.
Full scale deployment follows a review of the information learned from the trial. Furthermore, albeit not uniformly, full scale deployment follows a consensus and collaborative recommendation from the trial participants.	Full scale deployment began for ASI before the "trial" commenced.

Regardless of what SWBT chooses to call the sync test process, the reality is that this is not a trial. It is a free service offering to an affiliate on a timeline and under terms and conditions that only the affiliate could obtain.

IV. SWBT'S REQUIREMENT THAT EACH CLEC PROVIDE THE TEST EQUIPMENT IN EACH CENTRAL OFFICE IS UNREASONABLE, UNPRECEDENTED, INEFFICIENT, AND WAS PREDETERMINED BEFORE ANY TRIAL MEETINGS TOOK PLACE

One of the mandated terms that were prearranged between SWBT and ASI was that ASI would own the test equipment that will be used by the SWBT central office technician. This has been implemented as each CLEC being required to own test equipment in each central office. To exemplify the inefficiency, consider the following example with 5 CLECs participating. First, SWBT will have to have a shelf to place five different testing devices. Each device labeled with the name of the proper data provider. After a technician runs a test on an ASI circuit, the technician must next work on an IP circuit. Rather than simply doing the work, the technician must remind his or her self that the test handset being used can "only" be used for ASI circuits. So, that handset must be put back on the shelf and the IP handset picked up. Of course, after completing the next order, the next circuit is for ASI again. Etc. etc.

The resulting inefficiency shows the absurdity of the requirement, particularly when you factor multiple CLECs into the mix. As a general rule, maintenance and provisioning equipment are owned, maintained, and used by SWBT maintenance and provisioning personnel. From IP's perspective, the CLEC-ownership requirement appears to be SWBT's way to place a roadblock in front of CLECs that may wish to compete at parity with ASI. It may be the case that in some unique circumstances, when

a CLEC uses an unusually configured DSLAM, that a CLEC may need to provide its own handset; however, although such likelihood would be rare, we simply do not know because a true trial where such issues would be discussed and tested during a narrowly-focused trial was not developed. SBC refused to discuss and refused to attempt the use of a common piece of equipment. Also, SBC on behalf of ASI stated that ASI would not share the use of any existing test equipment currently in the central offices. Instead, as discussed above, SWBT agreed to have its technicians perform free work for ASI. As such, none of these issues were discussed or tested.

V. SWBT CONTINUED THE “TRIAL” IN SPITE OF ITS COMMITMENT THAT IT WOULD BE DISCONTINUED UNTIL IT WAS SUBJECT TO A MORE COLLABORATIVE PROCESS

The issue of SWBT’s sync test was raised during this Commission’s DSL forum held on November 2, 2000.⁵ At that meeting, Ms. Gentry raised some of the concerns discussed herein. After a brief discussion, SWBT Representative Schlackman and Roy Holden agreed to work with CLECs to address their concerns. Similarly, IP’s proposal to discontinue the trial would be discussed the next day on a prearranged conference call. During that follow-up call, it was certainly IP’s understanding that SBC agreed to halt the trial until concerns regarding definition and scope were addressed. To date no follow-up discussions have taken place.

Because of those representations, CLECs, until now, have not raised a complaint to this Commission regarding the discrimination with which they are facing. What changed is that during a line sharing meeting before the FCC staff, December 6, 2000, SWBT representatives stated that the trial was continuing. Later during that meeting, IP

noted that the information provided to the FCC staff was likely wrong based on the representations made following the Texas DSL forum. On December 7th an SBC executive advised Ms. Gentry that SBC would not stop the trial and if IP or any other CLECs wished to participate they could get equipment and advise SBC of their interest. All the while, ASI continued to receive this free service.

VI. ASI CONTINUES TO RECEIVE A FREE SERVICE THAT GIVES IT A SUBSTANTIAL, UNFAIR COMPETITIVE ADVANTAGE

The affect of ASI receiving favorable treatment with the sync test is substantial. In theory, a SWBT-provided "sync" test, in a true sense of the word, should actually not be necessary. DSLAMs typically have remote test capability that will allow the CLEC to determine if its DSLAM is working appropriately or is "synced-up" with a customer's modem. That said, it is IP's understanding that some or all of ASI's DSLAM equipment lacks remote test capability and thus a manual test like this "Sync" test is necessary to compensate for this lacking in ASI's equipment.

As a general rule, what a CLEC requires from SWBT is for SWBT to determine that there is continuity, i.e. that the loop/HFPL was provisioned correctly. If there is continuity, IP will generally have the capability to determine whether IP's equipment is "synced". Unfortunately, because of SWBT's poor provisioning, the "sync" test really becomes a combined sync and continuity test.

For example, when SWBT technicians complete the central office wiring, they then check to see that the wiring was done correctly. To date, this check is largely visual. In other words, the technician is only visually confirming that the wiring stops and starts

⁵ Docket Nos. 16251 and 20400, Transcript, Nov. 2, 2000 at 162-195.

in the correct places and that cross connects are properly installed. Unfortunately, SWBT's visual inspections are far from satisfactory. IP, as an example, continues to find over a 25% failure rate due to incomplete or incorrect central office wiring.⁶ Without repeating the concerns stated in IP's previous and on going informal complaint, it is sufficient to say that when the wiring is not performed as committed the CLEC incurs costs and delays relating to troubleshooting with SWBT. Moreover, the customer is frustrated with the delay in obtaining the desired service and occasionally multiple maintenance calls to their home until the problem is located. Eventually, it may be discovered that a cross connect was not tied-down correctly.

On the other hand, the same wiring flaw will be found for ASI because the "sync" test, will discover the lack of continuity on or before due date. As a result, the cross-connect problem will be discovered while provisioning the circuit. Thus, ASI avoids the costs, delays, and customer grumblings because it is receiving this service. The CLEC, on the other hand, bares the brunt of SWBT's provisioning errors.

It is noteworthy that the problem discovered in this example had nothing to do with "syncing" to the DSLAM. Instead, the problem discovered related to continuity, i.e. provisioning accuracy. The result is that ASI effectively has a check for accurate provisioning that is not available to CLECs. This is a blatant discrimination.

VII. RATHER THAN RESPONDING TO CLEC CONCERNS, SWBT IS EXPANDING THE PROBLEM

In spite of the grave concerns CLECs have raised with SBC-SWBT and with this Commission, SBC-SWBT has actually expanded the trial. In an accessible letter issued

⁶ See e.g. Docket 21000, Status Report of IP Communications, January 3, 2001.

between Christmas and New Year's Day, SWBT announced that the scope of the trial would be expanded to include maintenance scenarios. This accessible letter is marked as Exhibit 2. Again, only ASI is in a position to immediately benefit from this pronouncement that was not the result of collaborative discussion and consensus. Such unbridled and willful conduct demonstrates the obstacles that CLECs are facing and the need for a Commission presence to monitor and mediate this activity. SWBT has shown nothing but disdain and indifference to the real and substantial concerns raised by its *unaffiliated* wholesale customers. Such conduct shows a breakdown of market forces and the need for this Commission's immediate regulatory intervention.

VIII. THE STANDARD PROVISIONING PROCESS CONTINUES TO LANGUISH NOW THAT ASI HAS AN ALTERNATIVE FREE SERVICE TO FIND SWBT PROVISIONING FAILURES

It should not be surprising that the provisioning process continues to be insufficient. As stated above, IP continues to find central office problems on over 25% of its line sharing orders. SWBT simply does not see itself as having sufficient incentives to correct the flaws in its provisioning process. And, the cause, at least in large part, is likely related to the fact that its affiliate, ASI, is immunized from those problems because the problems on ASI's orders will be captured through the "sync" test. Consequently, not only is ASI receiving a substantial benefit that is effectively still not available to CLECs, there is the indirect affect of holding CLECs back as SWBT redirects its energies elsewhere since ASI is well taken care of through an alternative arrangement.

CONCLUSION & RELIEF REQUESTED

Of greatest immediacy is the immediate end to this discriminatory, free sync testing service being provided to ASI. This discriminatory process not only gives ASI a leg up on its competitors but also has the indirect affect of laying a weight on the CLECs. The existence of SWBT's poor provisioning record is bad enough. The harm is magnified by special considerations being given to SWBT's data affiliate. Further, because the data affiliate is isolated from many of the problems in the standard process, SWBT does not have an incentive to make the standard process work. This result is in complete conflict with the intent behind creating a separate data affiliate and the commercial and regulatory expectations that were cultivated.

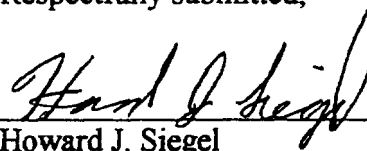
By way of relief, IP seeks an immediate halt to the sync test and the development of a complete and collaboratively-developed test plan before it is resumed. Second, such a trial should be limited in geographic scope so it is not abused as a recreation of the "free service" that it has currently become. A component of the trial must be the determination to use common test equipment and potential for equipment anomalies that might preclude a specific make or model. (Note: Several DSLAM vendors have stated that the major brands could utilize the same simple piece of test equipment). Third, IP seeks this Commission's monitoring of the trial to assure that the new trial does not become a facade to reimplement what SWBT and ASI previously ordained.

Finally, IP seeks a Commission review of the actions that have led us to this point. Such a review should take place in the forum the Commission deems most appropriate whether this informal forum or otherwise. Where improper and deliberate discrimination takes place, there must be harsh penalties. In a prior DSL forum, IP raised

the issue of discrimination favoring ASI generically. The Commission must understand that while actions favoring ASI continue, DSL competitors are going out of business. The publicly held DSL competitors have stock prices that have all fallen by over 90%. Promises to be better in the future are not enough. DSL competition is the great opportunity for residential competition. It should not be remembered as the opportunity that was taken away.

IP appreciates the Commission's assistance in resolving these issues. IP is hopeful that by bringing these issues to light, SWBT during the informal meetings will immediately agree that a fresh look is necessary on these issues and that immediate action is necessary.

Respectfully submitted,



Howard J. Siegel

Bar Number 00788412

Vice President of Regulatory Policy

IP Communications Corporation

502 West 14th Street

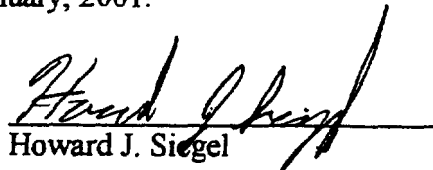
Austin, Texas 78701

512.236.8387 Tel

781.394.9029 Fax

CERTIFICATE OF SERVICE

I, Howard J. Siegel, Vice President of Regulatory Policy for IP Communications Corporation, certify that a true and correct copy of this document was served upon Timothy Leahy, Attorney for Southwestern Bell Telephone Company via hand delivery and first class mail on this, the 3rd day of January, 2001.



Howard J. Siegel

EXHIBIT 1

**“Central Office (CO) Synch Testing Trial for the High Frequency Portion of the Loop (HFPL)
(Ordering and Provisioning) – Arkansas, Kansas, Missouri, Oklahoma, Texas”**

Date: September 21, 2000

Number: **CLEC00-182**

Contact: Account Manager

Category: UNE

On May 29, 2000, Southwestern Bell Telephone Company (SWBT) made line sharing available. In an ongoing effort to enhance the provisioning process for the High Frequency Portion of the Loop (HFPL), SWBT will conduct a trial for Central Office Synch Testing. This process enhancement will test synchronization between the Main Distribution Frame (MDF) and the CLEC DSLAM (Digital Subscriber Line Access Multiplexer) on the HFPL.

We expect the trial to begin on October 1st and last approximately 3 months, depending upon key learning, equipment factors and CLEC feedback. SWBT will meet with the CLECs regularly via conference call to discuss trial parameters and progress. The first of these meetings will be Friday, September 29 at 10:00 A.M. Central. Participation in the trial will enable CLECs to provide feedback prior to the launch of a full service offering.

SWBT reserves the right to cancel, amend or alter this trial at any time without prior notice.

If you would like to participate in the trial, please contact your Account Manager to arrange attendance at the kickoff meeting.

EXHIBIT 2

"(ORDERING AND PROVISIONING) Central Office Synchronization Testing Trial - Notification of Enhancements - Arkansas, Kansas, Missouri, Oklahoma, Texas"

Date: December 21, 2000

Number: **CLEC00-279**

Contact: Account Manager

Category: All

This letter is to inform you that Southwestern Bell will be extending the Central Office Sync Testing Trial sixty (60) days to March 5, 2001. In addition, on January 2, 2001, this trial will be expanded to include Sync Testing on maintenance tickets. This enhancement will run for the duration of the trial.

The CO Sync test process for provisioning new orders will continue in its current format. The basic requirements for Sync Testing maintenance requests will be consistent with those developed for the provisioning process in that the Sync Testing will be available in all central office locations where line sharing is provided across the 13 state region. Each CLEC wanting to participate must select one type of xDSL service to be tested in this trial and provide one test set per central office they would like included in the trial. The test set must have two indicators so as to require no interpretation as to the result of the test.

While the SBC ILECs do not recommend or endorse any specific equipment, the following test sets have been identified as possible devices:

- Colt 250
 - Harris TS1000
 - Tempo DSL 2000
 - Westel Portable Modem
 - Arescom Model ND860
- Other devices may be available.

The trouble reporting requirements for maintenance Sync Testing will be detailed in an upcoming Accessible Letter and will also be discussed at the Four Regional User Forums.

Should you have any questions please contact your Account Manager.